

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
and STATE OF NEBRASKA,)	
)	
Plaintiffs,)	8:11CV274
)	
V.)	
)	
STABL, INC.,)	ORDER
)	
Defendant.)	
)	

On May 21, 2013, the Court granted, in part, Plaintiffs’ Motion for Partial Summary Judgment on the Issue of Liability ([filing 98](#)). Citing [United States v. Tull, 481 U.S. 412, 426-27 \(1987\)](#), in which the United States Supreme Court held that Clean Water Act penalty issues are decided by the court, Plaintiffs have moved that this case be removed from the jury docket. ([Filing 107.](#))

Defendant has filed an Objection to Plaintiffs' request to remove this case from the jury docket ([filing 109](#)). In its Objection, Defendant recognizes the *Tull* decision and provides no authority supporting a right to a jury trial in this case. Instead, Defendant's Objection states that Defendant is seeking to preserve its position on its anticipated appeal of the Court's May 21, 2013 Memorandum and Order ([filing 98](#)). Defendant also claims in its Objection that an advisory jury could save a great deal of time if the Court's award of summary judgment is reversed.

In accordance with the *Tull* decision, Plaintiffs’ Motion to Change Trial on Docket to Bench Trial ([filing 107](#)) will be granted. The Court declines Defendant’s invitation for an advisory jury.

IT IS ORDERED:

1. Plaintiffs' Motion to Change Trial on Docket to Bench Trial ([filing 107](#)) is

granted.

2. The Clerk of Court is directed to modify the docket sheet to reflect that trial of this matter will be to the bench, not a jury.

DATED August 19, 2013.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**